

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFFREY E. WALKER,

Plaintiff,

v.

KROL, et al.,

Defendants.

Case No. [15-cv-05819-HSG](#)

**ORDER GRANTING EXTENSION OF
TIME TO FILE RESPONSE**

Re: Dkt. Nos. 61, 62

This order addresses Plaintiff's requests for an extension of time to file the supplemental briefing ordered by the Court on July 6, 2023. Dkt. Nos. 61, 62.

BACKGROUND

Plaintiff commenced this action on or about December 18, 2015, over eight years ago. Dkt. No. 1. The Court found that the complaint stated certain cognizable claims and ordered service. Dkt. No. 9. On August 7, 2017, the Court dismissed the action with prejudice due to Plaintiff's failure to attend his own deposition pursuant to Fed. R. Civ. P. 41(b) which provides district courts with the authority to dismiss an action because of a plaintiff's failure to comply with court orders or to prosecute an action; and entered judgment in favor of Defendants. Dkt. Nos. 35, 36. On January 28, 2022, more than four years after the action was dismissed, Plaintiff requested that the Court vacate the dismissal and judgment pursuant to Fed R. Civ. P. 60(b)(6) and reopen the case. Dkt. No. 49. Plaintiff alleged that he was unable to prosecute the case earlier because he had been involuntarily medicated during the relevant time period. *Id.* On July 6, 2023, the Court ordered the parties to provide supplemental briefing on two specific issues, to assist the Court in deciding Plaintiff's Fed. R. Civ. P. 60(b)(6) motion. Dkt. No. 54. Defendants filed their supplemental brief on September 25, 2023. Dkt. Nos. 58-60. Plaintiff's responsive supplemental

1 brief was due October 23, 2023, but Plaintiff did not file anything with the Court until a month
2 and a half later on December 6 and 8, 2023, when he requested extensions of time to file his
3 responsive supplemental brief, Dkt. Nos. 61, 62.

4 DISCUSSION

5 In his requests for an extension of time,¹ Plaintiff stated that he had been unable to work on
6 his supplemental brief because he is prosecuting multiple other cases simultaneously, including his
7 civil commitment case; he was hospitalized in July 2023; carpal tunnel and hand surgery limited
8 this ability to write for a while; he is suffering from numerous health issues, including COVID-19
9 and kidney failure; and Plaintiff had not received Defendants' supplemental brief as of December
10 6, 2023. Plaintiff also requests that he be allowed to obtain his Coalinga State Hospital mental
11 health records from 2016 to 2021. *See generally* Dkt. Nos. 61, 62. Defendants oppose the request
12 for an extension of time. Defendants argue that Plaintiff has not shown the good cause required
13 by Fed. R. Civ. P. 6 because Defendants have been prejudiced by Plaintiff's delays throughout the
14 life of this case, that Plaintiff has not explained why he delayed 45 days after the deadline had
15 expired to seek an extension of time; Plaintiff's hand surgery only reduced his working hours by
16 half, not entirely; Plaintiff's other lawsuits do not provide a basis for a finding of excusable
17 neglect; and Plaintiff has not demonstrated good faith in requesting an extension of time because
18 more than four months have passed since the deadline and Plaintiff has not filed his supplemental
19 briefing, or indicated when he might do so. Dkt. No. 63.

20 The Court agrees that Plaintiff has not demonstrated good cause for the extensive delay in
21 filing the supplemental briefing.

22 Plaintiff's choice to file numerous lawsuits does not constitute good cause for delaying this
23 (or any other) case. In addition, delays prejudice the opposing party and affect the availability of
24 relevant evidence. Moreover, Defendants note that Plaintiff has failed to meet deadlines in his
25 other cases as well, Dkt. No. 63 at 3 n.2, casting doubt on this claim that other litigation prevents
26 him from meeting the deadlines in this case and raising concerns about his regard for court
27

28 ¹ The requests for an extension of time are identical. *Compare* Dkt. No. 61 *with* Dkt. No. 62.

1 deadlines. Dkt. No. 63 at 3 n.2.

2 Plaintiff's hand injury does not constitute good cause for granting an extension of time.
3 Plaintiff's hand injury does not seem to have significantly affected his litigation activity, as he
4 reports that he is still actively litigating numerous cases.

5 Finally, if Plaintiff seeks his medical records, he should request them directly from
6 Coalinga State Hospital. Neither the Court nor Defendants are responsible for providing Plaintiff
7 with these records. Given that these are Plaintiff's personal medical records, it is unclear why
8 Plaintiff is unable to obtain them. However, if Plaintiff believes that that he requires a subpoena
9 to access these records, he may file a request with this Court for issuance of a subpoena. The
10 request must be accompanied by a showing that Plaintiff is only able to obtain these records via a
11 third-party subpoena.² The Court notes that Plaintiff has been aware of the need for these records
12 since supplemental briefing was ordered on July 6, 2023.

13 However, in the interests of justice, the Court GRANTS Plaintiff a final extension of time
14 to April 8, 2024 to file the supplemental briefing ordered by the Court on July 6, 2023. With this
15 extension of time, Plaintiff will have been granted approximately a five month extension of time.
16 **No further extensions of time will be granted.** Plaintiff's motion to reopen pursuant to Fed. R.
17 Civ. P. 60(b)(6), Dkt. No. 49, will be deemed submitted as of April 8, 2024, and the Court will
18 decide the motion based on the pleadings deemed submitted as of April 8, 2024. The Court will
19 apply the mailbox rule to Plaintiff's filings.³

20 CONCLUSION

21 For the reasons set forth above, the Court GRANTS Plaintiff a final extension of time to
22 April 8, 2024 to file the supplemental briefing ordered by the Court on July 6, 2023. **No further**
23 **extensions of time will be granted.** Plaintiff's motion to reopen pursuant to Fed. R. Civ. P.
24 60(b)(6), Dkt. No. 49, will be deemed submitted as of this date, and the Court will decide the

25 _____
26 ² For example, Plaintiff should provide documentation of his requests for the requested records
and the denials.


27 ³ In determining when a Section 1983 suit filed by a pro se prisoner is filed, the "mailbox" rule
28 applies. *Douglas v. Noelle*, 567 F.3d 1103, 1107 (9th Cir. 2009). A Section 1983 complaint is
considered to be filed on the date a prisoner delivered it to prison authorities for forwarding to the
court clerk. *Houston v. Lack*, 487 U.S. 266, 276 (1988).

1 motion based on the pleadings deemed submitted as of April 8, 2024.

2 This order terminates Dkt. Nos. 61, 62.

3 **IT IS SO ORDERED.**

4 Dated: 3/6/2024

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6 HAYWOOD S. GILLIAM, JR.
7 United States District Judge
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United States District Court
Northern District of California